

**Objection Deadline:** January 21, 2020 at 4:00 p.m. (AST)

**Hearing Date and Time:** TBD by Court, if necessary

**UNITED STATES DISTRICT COURT  
DISTRICT OF PUERTO RICO**

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In re:

THE FINANCIAL OVERSIGHT AND  
MANAGEMENT BOARD FOR PUERTO RICO,

as representative of

THE COMMONWEALTH OF PUERTO RICO, et  
al.,

Debtors.<sup>1</sup>

PROMESA  
Title III

No. 17 BK 3283-LTS

(Jointly Administered)

**This pleading applies to only the  
Commonwealth and ERS Title  
III cases.**

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**NOTICE OF URGENT MOTION FOR ENTRY  
OF SUPPLEMENTAL STIPULATION BETWEEN THE COMMONWEALTH  
OF PUERTO RICO AND THE EMPLOYEES RETIREMENT SYSTEM OF THE  
GOVERNMENT OF THE COMMONWEALTH OF PUERTO RICO REGARDING  
THE TOLLING OF STATUTE OF LIMITATIONS AND [PROPOSED] ORDER**

**PLEASE TAKE NOTICE** that the Commonwealth of Puerto Rico (the “Commonwealth”) and the Employees Retirement System of the Government of the Commonwealth of Puerto Rico (“ERS,” and together with the Commonwealth, the “Debtors”), as Title III debtors, by and through the Financial Oversight and Management Board for Puerto Rico (the “Oversight Board”), as the Debtors’ representative pursuant to section 315(b) of the *Puerto Rico Oversight, Management, and Economic Stability Act* (“PROMESA”), are filing the annexed *Urgent Motion for Entry of Supplemental Stipulation Between the Commonwealth of Puerto Rico and the Employees Retirement System of the Government of the Commonwealth of Puerto Rico*

<sup>1</sup> The Debtors in these Title III Cases, along with each Debtor’s respective Title III case number and the last four (4) digits of each Debtor’s federal tax identification number, as applicable, are the (i) Commonwealth of Puerto Rico (Bankruptcy Case No. 17 BK 3283-LTS) (Last Four Digits of Federal Tax ID: 3481); (ii) Puerto Rico Sales Tax Financing Corporation (“COFINA”) (Bankruptcy Case No. 17 BK 3284-LTS) (Last Four Digits of Federal Tax ID: 8474); (iii) Puerto Rico Highways and Transportation Authority (“HTA”) (Bankruptcy Case No. 17 BK 3567-LTS) (Last Four Digits of Federal Tax ID: 3808); (iv) Employees Retirement System of the Government of the Commonwealth of Puerto Rico (“ERS”) (Bankruptcy Case No. 17 BK 3566-LTS) (Last Four Digits of Federal Tax ID: 9686); (v) Puerto Rico Electric Power Authority (“PREPA”); and (vi) Puerto Rico Public Buildings Authority (“PBA”) (Bankruptcy Case No. 17 BK 4780-LTS) (Last Four Digits of Federal Tax ID: 3747) (Title III case numbers are listed as Bankruptcy Case numbers due to software limitations).

*Puerto Rico Regarding the Tolling of Statute of Limitations and [Proposed] Order* (the “Urgent Motion”).

**PLEASE TAKE FURTHER NOTICE** that any responses or objections to the Urgent Motion must be in writing, must conform to the Federal Rules of Bankruptcy Procedure and the *Tenth Amended Notice, Case Management and Administrative Procedures* [ECF No. 8027-1] (the “Case Management Procedures”), and must be filed with the Court (a) by registered users of the Court’s case filing system, electronically in accordance with rule 5 of the Local Rules for the District of Puerto Rico, and (b) by all other parties in interest, on a CDROM, in text-searchable portable document format (PDF), and served on (i) counsel for the Oversight Board, Proskauer Rose LLP, Eleven Times Square, New York, New York 10036-8299 (Attn: Martin J. Bienenstock, Esq. and Brian S. Rosen, Esq.), and A&S Legal Studio, PSC, P.O. Box 79897, Carolina, Puerto Rico 00984-9897 (Attn: Luis F. del Valle-Emmanuelli, Esq.); (ii) counsel for the Puerto Rico Fiscal Agency and Financial Advisory Authority, O’Melveny & Myers LLP, 7 Times Square, New York, New York 10036 (Attn: John J. Rapisardi, Esq., Suzanne Uhland, Esq., and Peter Friedman, Esq.) and Marini Pietrantoni Muñiz LLC, MCS Plaza, Suite 500, 255 Ponce de León Ave., San Juan, PR 00917 (Attn: Luis C. Marini-Biaggi, Esq.); and (iii) the Office of the United States Trustee for Region 21, Edificio Ochoa, 500 Tanca Street, Suite 301, San Juan, PR 00901-1922, so as to be received no later than **January 21, 2020 at 4:00 p.m. (Atlantic Standard Time)**.

**PLEASE TAKE FURTHER NOTICE** that, if necessary, a hearing will be held before the Honorable Laura Taylor Swain, United States District Court Judge, at a time and place to be determined by the Court, to consider the relief sought by the Debtors in the Urgent Motion.

**PLEASE TAKE FURTHER NOTICE** that the relief requested in the Urgent Motion may be granted without a hearing if no objection is timely filed, served, and received in accordance with the Case Management Procedures.

**PLEASE TAKE FURTHER NOTICE** that copies of the Urgent Motion and all documents filed in these title III cases are available (a) free of charge by visiting <https://cases.primeclerk.com/puertorico> or by calling +1 (844) 822-9231, and (b) on the Court's website at <http://www.prd.uscourts.gov>, subject to the procedures and fees set forth therein.

*[Remainder of Page Intentionally Left Blank]*

Dated: January 16, 2020  
San Juan, Puerto Rico

Respectfully submitted,  
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*Co-Attorneys for the Financial Oversight and  
Management Board as Representative for the  
Employees Retirement System of the  
Government of the Commonwealth of Puerto  
Rico*

**Objection Deadline:** January 21, 2020 at 4:00 p.m. (AST)

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In re:

THE FINANCIAL OVERSIGHT AND  
MANAGEMENT BOARD FOR PUERTO RICO,

as representative of

THE COMMONWEALTH OF PUERTO RICO, et  
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PROMESA

Title III

No. 17 BK 3283-LTS

(Jointly Administered)

**This pleading applies to only the  
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**URGENT MOTION FOR  
ENTRY OF SUPPLEMENTAL STIPULATION BETWEEN  
THE COMMONWEALTH OF PUERTO RICO AND THE  
EMPLOYEES RETIREMENT SYSTEM OF THE GOVERNMENT  
OF THE COMMONWEALTH OF PUERTO RICO REGARDING  
THE TOLLING OF STATUTE OF LIMITATIONS AND [PROPOSED] ORDER**

To the Honorable United States District Court Judge Laura Taylor Swain:

The Commonwealth of Puerto Rico (the “Commonwealth”) and the Employees Retirement System of the Government of the Commonwealth of Puerto Rico (“ERS,” and together with the Commonwealth, the “Debtors”), as Title III debtors, by and through the Financial Oversight and Management Board for Puerto Rico (the “Oversight Board”), as the Debtors’ representative pursuant to section 315(b) of the *Puerto Rico Oversight, Management,*

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<sup>1</sup> The Debtors in these Title III Cases, along with each Debtor’s respective Title III case number and the last four (4) digits of each Debtor’s federal tax identification number, as applicable, are the (i) Commonwealth of Puerto Rico (Bankruptcy Case No. 17 BK 3283-LTS) (Last Four Digits of Federal Tax ID: 3481); (ii) Puerto Rico Sales Tax Financing Corporation (“COFINA”) (Bankruptcy Case No. 17 BK 3284-LTS) (Last Four Digits of Federal Tax ID: 8474); (iii) Puerto Rico Highways and Transportation Authority (“HTA”) (Bankruptcy Case No. 17 BK 3567-LTS) (Last Four Digits of Federal Tax ID: 3808); (iv) Employees Retirement System of the Government of the Commonwealth of Puerto Rico (“ERS”) (Bankruptcy Case No. 17 BK 3566-LTS) (Last Four Digits of Federal Tax ID: 9686); (v) Puerto Rico Electric Power Authority (“PREPA”); and (vi) Puerto Rico Public Buildings Authority (“PBA”) (Bankruptcy Case No. 17 BK 4780-LTS) (Last Four Digits of Federal Tax ID: 3747) (Title III case numbers are listed as Bankruptcy Case numbers due to software limitations).

and Economic Stability Act (“PROMESA”),<sup>2</sup> respectfully submit this urgent motion (the “Urgent Motion”), for entry of a supplemental stipulation and order, attached hereto as Exhibit A (the “Supplemental Stipulation”),<sup>3</sup> between the Commonwealth and ERS that, among other things, tolls the statute of limitations in connection with certain alleged avoidance actions (the “Avoidance Actions”) purportedly possessed by ERS and the Commonwealth against one another. In support of this Urgent Motion, the Debtors respectfully represent as follows:

### **Background**

1. On May 3, 2017, a petition under Title III of PROMESA was filed on behalf of the Commonwealth with the United States District Court for the District of Puerto Rico.

2. On May 21, 2017, a petition under Title III of PROMESA was filed on behalf of ERS with the United States District Court for the District of Puerto Rico (the “ERS Title III Case”). The institution of the ERS Title III Case triggered the automatic stay of creditor remedies against ERS. *See* 48 U.S.C. § 2161(a) (incorporating 11 U.S.C. §§ 362 and 922 into PROMESA).

3. Discussions among the Commonwealth, ERS, and certain ERS bondholders (the “ERS Bondholders”) ensued regarding the tolling of the statute of limitations applicable to the Avoidance Actions, which, absent the February Stipulation (defined below), would have expired on May 21, 2019 or sometime in July, 2019.

4. On February 19, 2019, the ERS Bondholders filed the *Motion of Certain Secured Creditors of the Employees Retirement System of the Government of the Commonwealth of Puerto Rico for Appointment as Trustees under 11 U.S.C. § 926* [ECF No. 5169] (the “Trustee

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<sup>2</sup> PROMESA has been codified in 48 U.S.C. §§ 2101–2241.

<sup>3</sup> Descriptions of the Supplemental Stipulation contained herein are for summary purposes only. The terms and provisions of the Supplemental Stipulation govern to the extent any inconsistencies exist between the Supplemental Stipulation and the descriptions of the Supplemental Stipulation contained herein.

Motion”), requesting entry of an order appointing the ERS Bondholders as trustees to pursue certain of the Avoidance Actions on behalf of ERS against the Commonwealth or, in the alternative, appointing an independent third-party fiduciary as trustee to pursue such actions.

5. Thereafter, discussions and drafting efforts among the parties commenced with regard to a tolling stipulation, and an agreement was ultimately reached. That agreement was filed in by a motion signed by the Oversight Board and AAFAF on February 25, 2019, with the proposed stipulation attached thereto as Exhibit A [ECF No. 5223 in Case No. 17-bk-03283]. Such stipulation was so-ordered by the Court on February 28, 2019 [ECF No. 5271 in Case No. 17-bk-03283] (the “February Stipulation”). Among other things, the February Stipulation provided that:

The period in which Avoidance Actions of the Commonwealth, on the one hand, and ERS, on the other hand, must be commenced against one another pursuant to sections 546(a) and 549(d) of the Bankruptcy Code (the “Statutory Deadlines”) shall be tolled such that the Statutory Deadlines shall expire (a) two hundred seventy (270) days from and after the date on which the Statutory Deadlines would have expired in the absence of this [February] Stipulation . . .

*Id.* at 3.

6. On November 19, 2019, the ERS Bondholders filed the *Renewed Motion of Certain Secured Creditors of the Employees Retirement System of the Government of the Commonwealth of Puerto Rico for Appointment of Trustees Under 11 U.S.C. § 926* [ECF No. 9261] (the “Renewed Trustee Motion”). The court denied the Renewed Trustee Motion [ECF No. 9712], and the ERS Bondholders appealed that decision to the United States Court of Appeals for the First Circuit [ECF No. 9723] (the “926 Appeal”).

7. Once docketed at the First Circuit, the ERS Bondholders moved to expedite the briefing schedule and for expedited determination of the 926 Appeal [Case No. 20-1065 (1st Cir.

Jan. 10, 2020), Doc. No. 00117536996] (the “Motion to Expedite”). Among other reasons, the ERS Bondholders argued that expedited briefing and determination were necessary to avoid the risk of prejudice to their rights under statutes of limitations for government avoidance actions.

8. Thereafter, the parties thereto, including the ERS Bondholders, Oversight Board, AAFAF, and the Official Committee of Retired Employees of Puerto Rico, entered discussions to consensually resolve the Motion to Expedite. An agreement was reached, and was filed with the First Circuit on January 15, 2020 [Case No. 20-1065, Doc. No. 00117538364] (the “Joint Scheduling Motion”). The First Circuit granted the Joint Scheduling Motion that same day. The Joint Scheduling Motion agreed to expedite briefing for the 926 Appeal. The Joint Scheduling Motion also explained that:

To enable this briefing schedule, and to provide time for the Court to decide the appeal, the Employees Retirement System of the Government of the Commonwealth of Puerto Rico, on the one hand, and the Commonwealth of Puerto Rico, on the other hand, have agreed, and will further evidence such agreement with a stipulation, to further toll the applicable statutes of limitations for the two underlying avoidance claims at issue for an additional period of time, such that the limitations period for the claim under 11 U.S.C. § 544 shall be extended to March 30, 2020, and the limitations period for the claim under 11 U.S.C. § 549 shall be extended to April 30, 2020.

*Id.* at 1.

9. The Joint Scheduling Motion superseded the Motion to Expedite, the latter of which the ERS Bondholders withdrew. *Id.* at 2.

#### **Relief Requested**

10. In accordance with the agreement described in the Joint Scheduling Motion, the Debtors, through the Oversight Board and AAFAF, have agreed that the period in which Avoidance Actions of the Commonwealth, on the one hand, and ERS, on the other hand, must be

commenced against one another pursuant to sections 546(a) and 549(d) of the Bankruptcy Code (the “Statutory Deadlines”) shall be further extended from the dates provided by the Stipulation (i) with respect to Avoidance Actions under section 544 of the Bankruptcy Code until March 30, 2020 and (ii) with respect to Avoidance Actions under section 549(d) of the Bankruptcy Code identified in the Bondholders’ draft complaint [ECF No. 9260-1 in Case No. 17-bk-3283] until April 30, 2020.

11. Accordingly, the Supplemental Stipulation attached hereto as **Exhibit A** has been executed by the Debtors and is now being presented to this Court through this Urgent Motion for approval and entry on the docket.

12. Pursuant to Paragraph I.H of the Case Management Procedures, the Debtors hereby certify that they have carefully examined the matter and concluded that there is a true need for an urgent motion; have not created the urgency through any lack of due diligence; have made a bona fide effort to resolve the matter without a hearing; and have made reasonable, good-faith communications in an effort to resolve or narrow the issues that are being brought to the Court.

### **Notice**

13. The Debtors have provided notice of this Urgent Motion to: (a) the Office of the United States Trustee for the District of Puerto Rico; (b) the indenture trustees and/or agents, as applicable, for the Debtors’ bonds; (c) the entities on the list of creditors holding the 20 largest unsecured claims against the Debtors; (d) the statutory committees appointed in these Title III Cases; (e) the Office of the United States Attorney for the District of Puerto Rico; (f) counsel to the Puerto Rico Fiscal Agency and Financial Advisory Authority; (g) the Puerto Rico Department of Justice; and (h) all parties filing a notice of appearance in these Title III Cases.

The Debtors submit that, in light of the nature of the relief requested, no other or further notice need be given.

**No Prior Request**

14. No prior request for the relief sought in this Urgent Motion has been made to this or any other court.

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**WHEREFORE** the Debtors respectfully request the Court to approve and enter the Supplemental Stipulation, attached hereto as Exhibit A, and grant the Debtors such other relief as is just and proper.

Dated: January 16, 2020  
San Juan, Puerto Rico

Respectfully submitted,

/s/ Brian S. Rosen

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Employees Retirement System of the  
Government of the Commonwealth of Puerto  
Rico*

**Exhibit A**

**Stipulation**

UNITED STATES DISTRICT COURT  
DISTRICT OF PUERTO RICO

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In re:

PROMESA

Title III

THE FINANCIAL OVERSIGHT AND  
MANAGEMENT BOARD FOR PUERTO RICO,

as representative of

No. 17 BK 3283-LTS

THE COMMONWEALTH OF PUERTO RICO, *et al.*,

Debtors.<sup>1</sup>

(Jointly Administered)

-----X

**SUPPLEMENTAL STIPULATION BETWEEN THE COMMONWEALTH OF PUERTO RICO AND THE EMPLOYEES RETIREMENT SYSTEM OF THE GOVERNMENT OF THE COMMONWEALTH OF PUERTO RICO REGARDING THE TOLLING OF STATUTE OF LIMITATIONS AND [PROPOSED] ORDER**

The Commonwealth of Puerto Rico (the “Commonwealth”), by and through Autoridad de Asesoría Financiera y Agencia Fiscal de Puerto Rico, whose name in English is the Puerto Rico Fiscal Agency and Financial Advisory Authority (“AAFAF”), and the Employees Retirement System of the Government of the Commonwealth of Puerto Rico (“ERS”), by and through the Financial Oversight and Management Board for Puerto Rico (the “Oversight Board”), as the representative of ERS, do hereby stipulate as follows:

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<sup>1</sup> The Debtors in these Title III Cases, along with each Debtor’s respective Title III case number and the last four (4) digits of each Debtor’s federal tax identification number, as applicable, are the (i) Commonwealth of Puerto Rico (Bankruptcy Case No. 17 BK 3283-LTS) (Last Four Digits of Federal Tax ID: 3481); (ii) Puerto Rico Sales Tax Financing Corporation (“COFINA”) (Bankruptcy Case No. 17 BK 3284-LTS) (Last Four Digits of Federal Tax ID: 8474); (iii) Puerto Rico Highways and Transportation Authority (“HTA”) (Bankruptcy Case No. 17 BK 3567-LTS) (Last Four Digits of Federal Tax ID: 3808); (iv) Employees Retirement System of the Government of the Commonwealth of Puerto Rico (“ERS”) (Bankruptcy Case No. 17 BK 3566-LTS) (Last Four Digits of Federal Tax ID: 9686); (v) Puerto Rico Electric Power Authority (“PREPA”); and (vi) Puerto Rico Public Buildings Authority (“PBA”) (Bankruptcy Case No. 17 BK 4780-LTS) (Last Four Digits of Federal Tax ID: 3747) (Title III case numbers are listed as Bankruptcy Case numbers due to software limitations).

**RECITALS**

A. On May 21, 2017, the Oversight Board issued a restructuring certification in accordance with Section 206(b) of the Puerto Rico Oversight, Management, and Economic Stability Act (“PROMESA”).

B. On May 21, 2017, in accordance with Section 302(2) of PROMESA, the Oversight Board filed a petition for relief on behalf of ERS, thereby commencing a case under Title III (the “ERS Title III Case”).

C. On February 28, 2019, the Court so-ordered that certain *Stipulation Between the Commonwealth of Puerto Rico and the Employees Retirement System of the Government of the Commonwealth of Puerto Rico Regarding the Tolling of Statute of Limitations and Order* (the “February Stipulation”) [ECF No. 5271 in Case No. 17-bk-3283].<sup>2</sup>

D. In order to protect all parties’ rights and interests, the Commonwealth and ERS, through the Oversight Board and AAFAF, respectively, have agreed to toll further the statute of limitations in connection with the Avoidance Actions, as set forth herein.

**NOW THEREFORE, IT IS HEREBY AGREED THAT:**

**AGREEMENT**

1. The period in which Avoidance Actions of the Commonwealth, on the one hand, and ERS, on the other hand, must be commenced against one another pursuant to sections 546(a) and 549(d) of the Bankruptcy Code (the “Statutory Deadlines”) shall be further extended (i) with respect to Avoidance Actions under section 544 of the Bankruptcy Code until March 30, 2020 and (ii) with respect to Avoidance Actions under section 549(d) of the Bankruptcy Code

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<sup>2</sup> Capitalized terms used but not defined shall have the meanings set forth in the February Stipulation.

identified in the ERS Bondholders' draft complaint [ECF No. 9260-1 in Case No. 17-bk-3283] until April 30, 2020.

2. Except as expressly provided herein, the February Stipulation shall remain in effect in all respects.
3. All rights of AAFAF, the Oversight Board, the ERS, the Commonwealth and the ERS Bondholders are reserved.

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/s/ Brian S. Rosen

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**SO ORDERED.**

Dated: \_\_\_\_\_, 2020  
San Juan, Puerto Rico

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LAURA TAYLOR SWAIN  
United States District Judge